

# **Procedural Safeguards**

## **For Children with Disabilities and Their Parents**

Under the  
Individuals with Disabilities Education  
Act 2004

April 2008

Dear Parents,

This document provides you with the required notice of the procedural safeguards available under the Individuals with Disabilities Education Act (IDEA).

For your convenience, a brief summary of your procedural safeguards is followed by the full text of procedural safeguards taken from the IDEA 2004 Draft regulations and the Utah State Office of Education Special Education Rules.

In this document the term “day” means calendar day, unless otherwise indicated.

Explanations of abbreviations used in this notice:

USOE     Utah State Office of Education

FAPE     Free Appropriate Public Education

IEP       Individualized Education Program

LEA       Local Education Agency – The forty Utah school districts, the Utah Schools for the Deaf and the Blind, and all public charter schools that are established under State law that are not schools of an LEA.

If you have any questions about these procedural safeguards, please feel free to contact your child’s special education teacher or the Special Education Department at the District Office. Further information may be obtained from the Utah Parent Center, 801-272-1051 or 1-800-468-1160.

## **PROCEDURAL SAFEGUARDS (Brief Summary)**

### **1. Confidentiality of Information**

- a. Your child's education records are kept in a confidential manner.
- b. Your child's educational records are not disclosed without your consent to anyone other than staff of the district involved with your child's education and to staff of another school or school district in which your child is seeking to enroll.
- c. You have the right to inspect and receive a copy of your child's education records.
- d. You have the right to request that information in your child's educational records be amended if you believe it is inaccurate or misleading.

### **2. Discipline**

- a. School staff may order the removal of your child from school for disciplinary reasons to the extent the removal is applied to non-disabled children, as long as the removals do not constitute a change of placement. A change in placement occurs if the child is removed from school for disciplinary reasons for more than 10 consecutive school days or if the child is subjected to a series of removals that constitute a pattern of removal.
- b. After your child has been removed from their current placement for more than 10 days during a school year, the school staff will provide services to your child to the extent necessary for your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in their IEP.
- c. School staff may order a change of placement to an appropriate alternative setting for not more than 45 days to the extent removal for disciplinary reasons is applied to non-disabled children if your child carries a weapon to school or to a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or causes serious bodily injury to another person while at school or a school function. The interim alternative setting must enable your child to continue to progress in the general curriculum and to continue to receive those services and modifications that will enable your child to progress on the goals set out in their IEP.
- d. If the school staff is considering a disciplinary action that involves changing your child's placement, you will be notified of that decision and a review will be conducted to determine the relationship between your child's disability and the behavior subject to the disciplinary action. If the result of this review is that the behavior was not a manifestation of your child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to your child in the same manner in which they would be applied to children without disabilities; however, the LEA must provide services to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in their IEP.
- e. After changing your child's placement for disciplinary reasons, school staff will conduct a functional behavioral assessment and convene the IEP team to develop a behavioral intervention plan; or if a behavior plan was in place it must be reviewed and modified as necessary by the IEP team.

- f. After your child's placement has been changed for disciplinary reasons, if your child continues to need to be removed for disciplinary reasons, the IEP team shall review your child's behavioral intervention plan and modify it to the extent the team feels is necessary.

### **3. Due Process**

- a. As parents of a child with a disability you have the opportunity to review your child's educational records and be included in meetings with respect to your child's evaluation, eligibility, IEP and placement
- b. You may request an independent educational evaluation if you disagree with the results of an evaluation obtained by the LEA.
- c. You will be given written notice before the LEA proposes or refuses to evaluate your child, identify (classify) or change the classification of your child, implement or change the implementation of your child's free appropriate public education in accordance with the IEP, or provide or change the educational placement of your child.
- d. Your consent will be obtained before an initial evaluation is conducted and before special education services are provided.
- e. Should any disagreement arise regarding the evaluation, eligibility, IEP or placement of your child, we will seek to resolve them in a mutually satisfactory manner. If we are unable to resolve a disagreement, we will offer to use a mediation process. If mediation is unsuccessful, a due process hearing may be necessary to resolve our disagreement.

### **4. Children with disabilities enrolled by their parents in private schools when free appropriate public education (FAPE) is an issue.**

- a. The LEA is not required to pay for the cost of education of your child in a private school if the district made FAPE available to your child and you elected to place your child in a private school.
- b. If you are considering rejecting the FAPE offered by the LEA and enrolling your child in a private school and you plan to seek reimbursement from the LEA, you need to inform the LEA of your concerns.

### **5. State Complaint Procedures**

- a. The LEA is committed to fully complying with all requirements of the IDEA; however, if you believe the LEA has violated a requirement of the IDEA, you have the right to file a written complaint. You will file with the LEA Superintendent, who will investigate, or appoint someone to investigate your complaints, and issue a written decision of findings to you within 30 days.
- b. If you disagree with the LEA findings, you have the right to appeal to the USOE State and Federal Compliance Officer, who will investigate and issue a final decision in writing.

## **PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES for PARENTS and CHILDREN (Subpart E)**

### **Opportunity to examine records; parent participation in meetings. (300.501)**

(a) The parents of a child with a disability must be afforded, in accordance with the state rules, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

(b) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. Each public agency must provide notice, consistent with state rules, to ensure that parents of children with disabilities have the opportunity to participate in meetings. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child, by taking steps to notify parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place. The notice of meeting must indicate the purpose(s), time, and location of the meeting and who will be in attendance; and inform the parents of their right to bring other individuals who have knowledge or special expertise about the child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

### **Independent educational evaluation. (300.502)**

(a) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child at public expense if they disagree with an evaluation obtained by the LEA. The LEA must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child; and public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(b) If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation

obtained by the parent did not meet agency criteria. If the LEA files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.

(c) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and may be presented by any party as evidence at a hearing on a due process complaint regarding that child.

(d) If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. An LEA may not impose additional conditions or timelines related to obtaining an independent educational evaluation at public expense.

#### **Prior notice by the public agency; content of notice. (300.503)**

(a) Written notice must be given to the parents of a child with a disability a reasonable time before the LEA proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) The notice required must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of this part; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal.

(c) The notice must be written in language understandable to the general public; and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the requirements have been met.

**Procedural safeguards notice. (300.504)**

(a) A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a year, except that a copy also must be given to the parents upon initial referral or parent request for evaluation; upon receipt of the first State complaint or a due process complaint in that school year; and upon request by a parent.

(b) The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to independent educational evaluations; prior written notice; parental consent; access to educational records; opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including the time period in which to file a complaint; the opportunity for the agency to resolve the complaint; and the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; the availability of mediation; the child's placement during pendency of hearings on due process complaints; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of children in private schools at public expense; hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; state-level appeals; civil actions, including the time period in which to file those actions; and attorneys' fees.

(c) The notice required must be in language understandable to the parents.

**Electronic mail. (300.505)**

A parent of a child with a disability may elect to receive notices by an electronic mail communication, if the LEA makes that option available.

**STATE COMPLAINT PROCEDURES**

1. The Utah State Office of Education (USOE) has adopted procedures for resolving any complaint, including a complaint filed by an organization or individual from another state. The complaint must be in writing to the LEA superintendent or charter school director of the LEA in which the alleged violation has occurred, with a copy sent to the State Director of Special Education. If the parents are unable to file in writing, they can contact the LEA or SEA for assistance. The complaint must include the following:
  - a. A statement that the LEA has violated a requirement of Part B of the IDEA or these Rules.
  - b. The facts on which the statement is based.
2. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than two years prior to the date the complaint is received by the LEA.

3. The LEA shall resolve the complaint within thirty (30) days unless exceptional circumstances exist (e.g., delay by a complainant to provide necessary information). An extension of time shall not exceed ten (10) days. Within this time limit, the LEA shall:
  - a. Carry out an independent on-site investigation, if the LEA determines that such an investigation is necessary.
  - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
  - c. Review all relevant information and make a determination as to whether the LEA is violating a requirement of Part B of the IDEA or of these Rules.
  - d. Issue a written decision to the complainant, with a copy sent to the State Director of Special Education that addresses each allegation in the complaint and contains: (1) Findings of facts and conclusions and (2) the reasons for the LEA's final decisions
  - e. Determine procedures for the effective implementation of the LEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
  - f. Inform the complainant, in writing of the right to appeal the decision for review to the USOE, and the procedures for doing so. The appeal request must be received by the State Director of Special Education within ten (10) days of the receipt of the LEA's final decision.
4. The procedures for reviewing the LEA's final decision on appeal to the USOE shall be the same as those outlined above. Within the remaining days of the sixty (60) calendar day time period after receipt of a written request for review, the USOE shall issue a final, written decision on the complaint.
5. In resolving a complaint in which it has found a failure to provide appropriate services, the USOE pursuant to its general supervisory authority under Part B of the IDEA must address:
  - a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student.
  - b. Appropriate future provision of services for all students with disabilities.
6. If a written complaint is received that is also the subject of a due process hearing, under the Due Process Hearing Procedures in these Rules, or contains multiple issues, of which one or more are part of that hearing, the LEA (or the USOE if the complaint is an appeal of an LEA decision) must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and complaint procedures described in this section.
7. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding. The USOE must inform both parties of this fact. A complaint alleging an



LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the USOE.

8. Parents and other interested individuals, including parent training and information centers, independent living centers, representatives of protection and advocacy agencies, professional organizations, and other appropriate entities, shall be formed about these procedures through:
  - a. Procedural safeguards notice provided by local school districts.
  - b. Presentations and other training events by USOE staff conducted throughout the state.

### **Mediation. (300.506)**

(a) Each LEA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) The procedures must ensure that the mediation process is voluntary on the part of the parties; is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. An LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; and who would explain the benefits of, and encourage the use of, the mediation process to the parent. The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The SEA must select mediators on a random, rotational, or other impartial basis. The State must bear the cost of the mediation process, including the costs of meetings described in this section. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and is signed by both the parent and a representative of the agency who has the authority to bind such agency. A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute. The parties to mediation may be required to sign a confidentiality pledge prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential.

(c) An individual who serves as a mediator under this part may not be an employee of the SEA or the LEA that is involved in the education or care of the child; and must not have a

personal or professional interest that conflicts with the person's objectivity. A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the agency to serve as a mediator.

#### **Filing a due process complaint. (300.507)**

(a) A parent or a public agency may file a due process complaint on any of the matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except if the parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or the LEA's withholding of information from the parent that was required under this part to be provided to the parent.

(b) The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information; or the parent or the agency requests a hearing under this section.

#### **Due process complaint. (300.508)**

(a) The LEA must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) The due process complaint must include the name of the child; the address of the residence of the child; the name of the school the child is attending; in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), available contact information for the child, and the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time.

(c) A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements listed above.

(d) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements. Within five days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements, and must immediately notify the parties in writing of that determination. A party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting; or the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not

later than five days before the due process hearing begins. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.

(e) If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes an explanation of why the agency proposed or refused to take the action raised in the due process complaint; a description of other options that the IEP Team considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and a description of the other factors that are relevant to the agency's proposed or refused action. If an LEA has not sent prior written notice to the parent regarding the subject matter of the parent's due process complaint until after the due process complaint is received, the LEA may still assert that the parent's due process complaint was insufficient, where appropriate.

### **Model forms. (300.509)**

The SEA has developed model forms to assist parents in filing a due process complaint and in filing a State complaint, available on the Utah State Office of Education website at [www.schools.utah.gov](http://www.schools.utah.gov).

### **Resolution process. (300.510)**

(a) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that includes a representative of the LEA who has decision-making authority on behalf of that agency; and may not include an attorney of the LEA unless the parent is accompanied by an attorney. The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. The resolution meeting need not be held if the parents and the LEA agree in writing to waive the meeting; or the parents and the LEA agree to use the mediation process described. The parents and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur. The timeline for issuing a final decision begins at the expiration of this 30-day period. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(c) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the

resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(d) The 45-day timeline for the due process hearing starts the day after one of the following events:

- (1) Both parties agree in writing to waive the resolution meeting;
- (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(e) If the parties execute an agreement, a party may void the agreement within 3 business days of the agreement's execution.

### **Impartial due process hearing. (300.511)**

(a) Whenever a due process complaint is filed, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) At a minimum, a hearing officer must not be an employee of the SEA or the LEA that is involved in the education or care of the child; or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise.

(e) A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

### **Hearing rights. (300.512)**

(a) Any party to a hearing, or an appeal, has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not

been disclosed to that party at least five business days before the hearing; obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) At least five business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party from introducing the relevant evaluation or recommendation not disclosed by the required date at the hearing without the consent of the other party.

(c) Parents involved in hearings must be given the right to have the child who is the subject of the hearing present; open the hearing to the public; and have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

### **Hearing decisions. (300.513)**

(a) A hearing officer must make a decision on substantive grounds based on a determination of whether the child received a FAPE. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or caused a deprivation of educational benefit. Nothing in paragraph (a) shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements.

(b) A parent has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.

(c) The SEA, after deleting any personally identifiable information, must transmit the findings and decisions on the due process complaint to the Utah Special Education Advisory Panel; and make those findings and decisions available to the public.

### **Finality of decision; appeal; impartial review. (300.514)**

(a) A decision made in a hearing conducted is final, except that any party involved in the hearing may appeal the decision, if a State level appeal is available.

(b) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; make an independent decision on completion of the review; and give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) The SEA, after deleting any personally identifiable information, must transmit the findings and decisions to the Utah Special Education Advisory Panel; and make those findings and decisions available to the public.

(d) The decision made by the hearing officer is final unless a party brings a civil action.

### **Timelines and convenience of hearings and reviews. (300.515)**

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day resolution period a final decision is reached in the hearing; and a copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review a final decision is reached in the review; and a copy of the decision is mailed to each of the parties.

(c) A hearing officer may grant specific extensions of time at the request of either party.

(d) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

### **Civil action. (300.516)**

(a) Any party aggrieved by the findings and decision who does not have the right to an appeal, and any party aggrieved by the findings and decision, has the right to bring a civil action with respect to the request for a due process hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law. Utah Code § 53A-15-305(6)(b) requires that judicial appeal be filed within 30 days after the issuance of a hearing officer decision.

(c) In any civil action, the court receives the records of the administrative proceedings; hears additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) The district courts of the United States have jurisdiction of actions brought under the Procedural Safeguards of the Act without regard to the amount in controversy.

(e) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under the Procedural Safeguards of the Act, the procedures must be exhausted.

### **Attorneys' fees. (300.517)**

(a) In any action or proceeding brought under Procedural Safeguards of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party who is the parent of a child with a disability; to a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of

litigation. Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding. An LEA may use funds under Part B of the Act for conducting an action or proceeding under the Procedural Safeguards of the Act.

(c) A court awards reasonable attorneys' fees consistent with the following: fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; the offer is not accepted within 10 days; and the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for due process. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or an administrative hearing or judicial action. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. The court reduces, accordingly, the amount of the attorneys' fees awarded, if the court finds that the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or the attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice. The above regulations regarding attorney's fees do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Procedural Safeguards.

### **Child's status during proceedings. (300.518)**

(a) During the pendency of any administrative or judicial proceeding regarding a request for a due process hearing, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents.

**Surrogate parents. (300.519)**

(a) Each public agency must ensure that the rights of a child are protected when no parent can be identified; the public agency, after reasonable efforts, cannot locate a parent; the child is a ward of the State under the laws of that State; or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) The duties of an LEA include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent; and for assigning a surrogate parent to the child.

(c) In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements.

(d) The LEA may select a surrogate parent in any way permitted under State law. Public agencies must ensure that a person selected as a surrogate parent is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child he or she represents; and has knowledge and skills that ensure adequate representation of the child.

(e) A person otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates, until a surrogate can be appointed that meets all of the requirements.

(g) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

(h) The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after an LEA determines that the child needs a surrogate.

**Transfer of parental rights at age of majority. (300.520)**

A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law) the public agency must provide any notice required by this part to both the individual and the parents; and all other rights accorded to parents under Part B of the Act transfer to the child; all rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and whenever a State transfers rights, the agency must notify the individual and the parents of the transfer of rights.



## CONFIDENTIALITY OF INFORMATION

The following definitions are provided as used in this section:

**Personally identifiable** means that information includes the name of the student, the student's parent, or other family member; the address of the student; a personal identifier, such as the student's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

**Destruction** means physical destruction or removal of personal identifiers from information such that it is no longer personally identifiable.

**Education records** mean the type of records covered under the definition of "education records" in 34CFR Part 99 (implementing regulations of the Family Education Rights and Privacy Act of 1974).

**Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

The USOE/LEA will establish and implement procedures which meet the requirements of Part B of the USOE Special education Rules, including notice to parents with: a description of the extent that the notice is given in the native languages of the various population groups in the state; a description of the students on whom personally identifiable information is maintained; the type of information sought; the methods the USOE has established for use in gathering the information (including sources from whom information is gathered), and the uses to be made of the information; a summary of the policies and procedures that the LEA must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information, and a description of all of the rights of parents and students regarding this information, including the rights under the Family Education Rights and Privacy Act of 1974 (FERPA) and implementing regulations under 34 CFR Part 99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the LEA of the activity.

The LEA shall permit parents to inspect and review any education records relating to their children, which are collected, maintained, or used by the LEA under the USOE Special Education Rules. The LEA shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any due process hearing, including an expedited due process hearing, and in no case more than 45 days after the request has been made.

The right to inspect and review education records includes: the right to a response from the LEA for explanations and interpretations of the records; the right to request that the LEA provide copies of the records, containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent inspect and review the records. An agency may

presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

**Record of access.** The LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except for access by parents and authorized employees of the LEA), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**Records on more than one student.** If any education record includes information on more than one student, the parents of each child shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

**List of types and locations of information.** On request, the LEA shall provide parents a list of the types and locations of education records collected, maintained, or used by the agency.

**Fees.** An LEA may charge reasonable fee for copies of records that are made for parents under Part B of the IDEA, if the fee does not effectively prevent parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information.

**Amendment of records at parent's request.** A parent who believes that information in the education records collected, maintained, or used under Part B of the IDEA is inaccurate or misleading or violates the privacy or other rights of the student, may request the LEA which maintains the information to amend the information. The LEA shall decide whether to amend the information in accordance with the request within a reasonable time of receipt of the request. If the LEA decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing on the matter.

**Opportunity for a hearing.** The LEA shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parents in writing. If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parents of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA. Any explanation placed in the records of the student under this section must be maintained by the LEA as part of the records of the student as long as the record or contested portion is maintained by the LEA, and if the records of the student or the contested part is disclosed by the LEA to any party, the explanation must also be disclosed to the party.

**Hearing procedures.** A hearing, which challenges the education records, must be held in accordance with 34 CFR 99 as specified in the procedures described below. At a minimum, the LEA's hearing procedures must adhere to the following requirements: the hearing shall be held

within a reasonable period of time after the LEA receives the request, and the parent of the student or eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing. The hearing may be conducted by any party, including an official of the LEA, that does not have a direct interest in the outcome of the hearing. The parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised, and may be assisted or be represented by individuals of his or her choice at his or her own expense, including an attorney. The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing. The decision of the district shall be based solely upon the evidence presented at the hearing, and shall include a summary of the evidence and the reasons for the decision.

**Parental consent.** Except as to disclosures addressed in the “Discipline Procedures” for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under this part, or used for any purpose other than meeting a requirement under this part. An LEA may not release information from education records to participating agencies without parental consent unless authorized to do so by 34 CFR 99.31 and 99.34 (FERPA). Regulation 34 CFR 99.31 states that an LEA may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the LEA who have been determined by the district to have legitimate educational interests, or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in 34 CFR 99.34, below. Regulation 34 CFR 99.34 states that an LEA transferring the education records of a student pursuant to 34 CFR 99.31 above shall make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except when the transfer of the records is initiated by the parent or eligible student at the sending LEA or when the LEA includes in its annual notice of procedural safeguards, that it is the policy of the LEA to forward education records on request to a school in which the student seeks or intends to enroll, then the LEA does not have to provide any further notice of the transfer of records.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of 34 CFR 99.31 and 99.34 noted above are met, and if the educational agency informs the party to whom disclosure is made of these requirements. If the parents refuse consent for the release of personally identifiable information to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.

**Special note:** Please be informed that as authorized in 34CFR99.31, your child’s records can and will be forwarded without your consent to officials of another school or school district in which your child seeks or intends to enroll.

**Safeguards.** The LEA shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the LEA shall assume

responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures in this section and 34 CFR Part 99. The LEA shall maintain, for public inspection, a current listing of names and positions of those employees within the LEA, and other agencies such as the Utah Schools for the Deaf and Blind (USDB) who may have access to personally identifiable information for students with disabilities. The listing shall include: the name of the district, name of school, school year, persons having access, and name of records manager. The above listing, where appropriate, must provide for the access of regular education teachers for their students with disabilities, and also must include the names and positions of consultants employed by the LEA and/or USDB, who may require access for legitimate educational reasons, to student records. This also includes student teachers or practicum students from universities, under the direction and supervision of school officials.

**Destruction of records.** The LEA shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed, may be maintained without time limitation.

**Special note:** Please be informed that your child's records will be considered "no longer needed to provide educational services" and will be destroyed three years after your child graduates or three years after your child turns 22, whichever comes first.

**Student's rights.** All of the foregoing parental rights regarding educational records are transferred to the student when reaching the age of 18, unless the student has been declared incompetent by court order. The LEA must provide the required notice of this action to the student and the parents consistent with the provisions of the USOE Special Education Rules.

**Enforcement.** Confidentiality requirements are reviewed and approved as part of the LEA eligibility process under IDEA Part B. Confidentiality is monitored through the Part B monitoring process at least once every five years and includes sanctions to ensure these requirements are met.

**Disciplinary information.** The USOE requires that an LEA include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against a student, and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students. The statement must include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current individualized education program and any statement of current or previous disciplinary action that has been taken against the student.

**U.S. Department of Education use of personally identifiable information.** If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding students with disabilities that is not subject to FERPA, the Secretary applies the applicable federal statute, and the regulations implementing those provisions in 34CFR Part 5b.

## **DISCIPLINE PROCEDURES**

### **Authority of school personnel. (300.530)**

(a) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement). After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services, such that the child continues to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(c) For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that FAPE must be provided.

(d) A child with a disability who is removed from the child's current placement must continue to receive FAPE; and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. The services may be provided in an interim alternative educational setting. A public agency need not provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed. After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, if any, and the location in which services, if any, will be provided. If the removal is for more than 10 consecutive school days or is a change of placement, the child's IEP Team determines appropriate services and the location in which services will be provided.

(e) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the

LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP. The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that either of the above conditions was met.

(f) If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) On the date which the decision to take disciplinary action is made, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(i) For purposes of this section, the following definitions apply: Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### **Determination of setting. (300.531)**

The interim alternative educational setting is determined by the IEP Team.

### **Appeal. (300.532)**

(a) The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or an LEA that believes that maintaining the

current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.

(b) A hearing officer hears, and makes a determination regarding, an appeal. The hearing officer may return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. The above procedures may be repeated, if the LEA believes the child would be dangerous if returned to the original placement.

(c) Whenever a hearing is requested under disciplinary procedures, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing. The SEA or LEA must arrange for an expedited hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing. A resolution meeting must occur within seven days of the date the hearing is requested, and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request. A State may establish different procedural rules for expedited hearings than it has established for due process hearings. The decisions on expedited due process hearings are appealable.

#### **Placement during appeals. (300.533)**

When an appeal has been requested by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of the removal, whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

#### **Protections for children not yet eligible for special education and related services. (300.534)**

(a) A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) An LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred the parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; the parent of the child requested an evaluation of the child; or the teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) A public agency would not be deemed to have knowledge if the parent of the child has not allowed an evaluation of the child; or has refused services under this part; or the child has been evaluated and determined to not be a child with a disability.

(d) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services.

### **Referral to and action by law enforcement and judicial authorities. (300.535)**

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

### **Change of placement because of disciplinary removals. (300.536)**

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if:

(a) The removal is for more than 10 consecutive school days; or

(b) The child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year; because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under § 300.530(f), to have been a manifestation of the child's disability; and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(b)(2) This determination is subject to review through due process and judicial proceedings.